

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219363, B-219364, **DATE:** July 3, 1985
MATTER OF: B-219365, B-219368
Julie Research Laboratories, Inc.

DIGEST:

Since protester's assertion that it attempted to file protests on earlier of two dates is supported by circumstantial evidence and since it is possible that protests were received then but misplaced by GAO personnel, protests will be considered provided they would have been timely had they been opened on the earlier date.

This is a preliminary decision concerning the status of four protests, copies of which were received on June 5, 1985, from Julie Research Laboratories, Inc.^{1/} According to Julie, the original protest documents were forwarded by Federal Express, along with a fifth protest, B-218598.1, which was received on May 1.^{2/} Our Office has no record that the four protests in question were received. Julie, however, says it sent all five protests in a single envelope and, therefore, the four protests in question must have been misplaced by our Office. While unclear, the record does indicate that it is possible the four protests were misplaced after receipt by our Office.

^{1/} The four concern one Air Force procurement (F41608-85-F-0044) and three procurements of the Naval Supply Systems Command (N00167-85-R-0064, N00123-85-D-0079, N00123-85-C-0075).

^{2/} That protest concerns Air Force procurement F33659-85-B-0053.

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The essential facts are as follows.

At 10:37 a.m. on May 1, a protest from Julie was hand-carried to our Office by messenger. The protest was opened under file number B-218598.1.

In mid-May, we received a call from the Navy, which advised our Procurement Law Control Group that a copy of a protest had been received at one of its facilities. The Navy noted that it had received no notification of that protest from our Office and inquired whether a protest had been filed. We advised the Navy that we had no record of any open cases filed by Julie concerning a Navy procurement. Thereafter, the Navy in late May wrote Julie, advising the firm that it had checked with our Office, that no protest had been filed and that, accordingly, the Navy was proceeding with award.

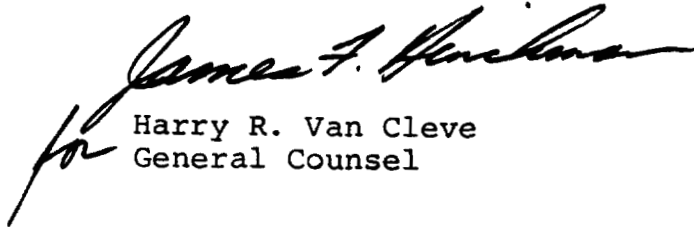
On or about the date of Julie's receipt of the Navy's letter, Julie contacted our Office and was advised that we had no record of receipt of the protests Julie stated it had enclosed with B-218598.1. Julie was told to submit copies. On June 5, we received copies of the four protests from Julie. Since then we have confirmed that on May 1 the contracting activities required to be furnished copies under our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1985), received copies of all four missing protests.

As stated, Julie believes the four missing protests must have been misplaced by our Office, because, as Julie maintains, it placed all of the protests in the same envelope which contained the protest we did open. Assuming all of the protests were in the envelope when it was hand-delivered to our Office on May 1, all of the protests should be treated as filed on that date. The term "filed" as used in this connection means receipt of the protest submission in this Office. 4 C.F.R. § 21.2(b).

On the other hand, our records concerning this matter were made in the ordinary course of our activities. Those records include logs kept at the point of receipt and two computerized record keeping systems. All of our records show that we received only one protest (B-218598.1) from Julie on May 1.

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Nevertheless, while our records show these protests were not received by us until June 5, the circumstances indicate the possibility that they were delivered to us by Federal Express on May 1 and thereafter were misplaced. Under the circumstances, we will give the protester the benefit of the doubt and for the purpose of determining timeliness consider them timely if they would have been timely had they been opened on May 1.


for Harry R. Van Cleve
General Counsel